

# Family dispute resolution services for Aboriginal and Torres Strait Islander families

## Closing the gap?

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A recent project arising from a partnership between the Federal Court of Australia and the Australian Institute of Aboriginal and Torres Strait Islander Studies highlighted many of the difficulties confronting Indigenous people in accessing culturally appropriate dispute resolution services across a number of domains (Federal Court of Australia Indigenous Dispute Resolution and Conflict Management Case Study Project, 2009). The project and the resultant report, titled *Solid Work You Mob Are Doing* ("the *Solid Work* report"), provides "evidence-based research and resources to support the development of more effective approaches to managing conflict involving Indigenous Australians" (p. xiii).

The *Solid Work* report is based on three comprehensive case studies and a number of smaller "snapshot" studies of Indigenous dispute resolution programs operating in Australia. The project is unique in that it is the first investigation that has primarily and specifically focused on dispute resolution in the Indigenous context. This article outlines some of the key points in

the report and integrates these points with the practice experience of the author, to provide an overview of issues relating to family dispute resolution (FDR) with Indigenous families.

When you get Aboriginal people through the door, they want to see you. They don't want to be transferred to one of those other [mainstream] services. ("Hamish", FRC Indigenous Advisor) (FCoA Project, 2009, p. 91)

Hamish identifies one of the obvious barriers that confront Aboriginal people when they attempt to access family dispute resolution through such agencies as Family Relationship Centres (FRCs). In essence, there is a lack of accredited Indigenous FDR practitioners who are able to provide dispute resolution services to Aboriginal families. The dearth of culturally appropriate FDR services for Indigenous Australians remains a significant gap in service provision. For example, according to the *Solid Work* report (2009), only twelve of Australia's 65 Family Relationship Centres are specifically funded to employ Indigenous Advisors, whose task is to assist Indigenous families to access FDR services. In the author's experience, delays in closing this gap are causing mounting frustration for Indigenous Australians.

The *Solid Work* report identifies a number of "critical factors for effective practice" (p. xvi) that are designed to assist practitioners and others in the design and delivery of dispute resolution processes. As such, the report is an important guide for the future development of Indigenous dispute resolution services in Australia. The key or critical factors for effective practice are identified as follows:

- *Ensuring that the parties have ownership of the process.* This is particularly relevant when considering the experience of Indigenous families being diverted into mainstream services and programs that are predominantly structured to accommodate the needs of non-Indigenous families.
- *Undertaking careful preparation prior to implementing the process.* Preparation in this context involves ensuring that the appropriate people who may have an interest in the dispute, including extended family and kin, are informed, invited

### What is "culturally appropriate" FDR in the Indigenous context?

- Services delivered by Indigenous practitioners, supported by good workforce development;
- Fostering skills and attributes in non-Indigenous practitioners to ensure they work effectively with Aboriginal and Torres Strait Islander clients;
- Tailoring services and FDR processes to meet the needs of Indigenous families, rather than referral into mainstream services;
- Education and awareness-raising within Indigenous communities of dispute resolution processes available;
- Community engagement, and organisational partnering in the provision of services; and
- Funding arrangements that allow for flexible and timely modes of service delivery.

to participate in the process and consulted in achieving possible agreements.

- *Working with the parties to design processes that meet their procedural, substantive and emotional needs.* Recognition of the unique needs of Indigenous families and the impact this has upon access to, and participation in, dispute resolution processes is fundamental to ensuring that Indigenous families derive a sense of satisfaction and achievement from participation in the process.
- *Ensuring the sustainability of agreements.* Tailoring agreements to the circumstances of Indigenous families that take into account factors such as family and community commitments, the viability of travel arrangements, local conditions, resources and so on, often requires a higher degree of scrutiny and care than may be the case in working with non-Indigenous families.
- *Ensuring that practitioners have the attributes and skill to be effective in working in the Indigenous context.*

The *Solid Work* report also presents a series of strategies for implementing effective practice to assist those with responsibilities for the development and delivery of dispute management services. The identified strategies include:

- education and awareness initiatives for communities and those who work with or provide services to Indigenous people;
- a range of training initiatives that recognise prior learning and are designed and delivered in culturally competent ways;
- professional support, appropriate remuneration and career opportunities for practitioners working in the Indigenous context;
- whole-of-community approaches that are facilitated by community engagement facilitators to ensure that agencies work together to deliver effective services; and
- dispute management service infrastructure at national, state/territory, regional and local levels (p. xvi).

The report openly acknowledges that there is a significant gap in the design and delivery of effective Indigenous dispute management services. It states:

*In many areas the necessary services to offer timely, responsive and effective dispute management processes (in the Indigenous context) are non-existent.*

*Where these services exist, they often face uncertain funding and inflexible institutional arrangements which impede their ability to deliver reliable and competent services. (p. xv)*

In the author's experience, nowhere is this dearth of such services more apparent than in the domain of family law. In this context, emotions run particularly high, and conflict in Aboriginal families involving extended families, multiple parties and complex issues often leads to involvement with the criminal justice system as a result of family violence.

## Indigenous FDR services in Family Relationship Centres

At the forefront of delivering family dispute resolution services in such situations is the network of 65 Family Relationship Centres that are scattered over metropolitan and regional Australia. In situations of family breakdown and separation, the FRCs are tasked with providing information, advice and dispute resolution to help people reach agreement on future parenting arrangements. All centres must provide flexible and culturally sensitive and accessible service to Indigenous clients, and have in place strategies to achieve this. There are a small number of Indigenous Advisors who are employed in these centres whose roles include:

- helping the centres to develop innovative and effective approaches to delivering FRC services to Indigenous families;
- conducting community education to Indigenous communities about FRC services;
- liaising with Indigenous communities and with other agencies servicing those communities;
- coordinating arrangements for service delivery (e.g., arranging visits by FRC staff to communities); and
- providing cultural advice and training to FRC staff.<sup>1</sup>

What is conspicuously missing from this list of roles is the provision of family dispute resolution services delivered by Indigenous practitioners. As noted earlier by Hamish, many Aboriginal people do not want to be referred to mainstream services and be seen by non-Indigenous practitioners. This, of course, is

<sup>1</sup> See <[tinyurl.com/34hmy9g](http://tinyurl.com/34hmy9g)>.

not a reflection upon the skills and capacity of non-Indigenous FDR practitioners, but simply an acknowledgement, as noted in the report, that for Aboriginal people, understanding of local conditions, language and culture, as well as a sense of “connectedness” and local authority are essential to effective practice with Indigenous families. In this context, culturally appropriate FDR practices are more likely to foster clients’ ownership of the process and promote engagement—factors that are identified in the *Solid Work* report as being critical to effective practice. The report states that, currently, “skilled practitioners who know local conditions, language and culture are irreplaceable and in short supply” (p. 116).

The absence of accredited Indigenous FDR practitioners is in part an outcome of the current system of accreditation that requires specific qualifications and the demonstration of competency through case discussions and interview. Although accreditation can be achieved through acknowledgement of prior learning and demonstrated competency, in the author’s experience, there are very, very few Indigenous people who would be able to satisfy the current criteria for accreditation without undertaking a course of formal study that would primarily focus on dispute resolution in a non-Indigenous context. For example, as stated in the *Solid Work* report, “Hamish had undertaken some training but the opportunities for him to access courses that would allow him to meet the accreditation requirements for family dispute resolution practitioners were very limited. Opportunities for him to access dispute resolution training with a focus on working with Indigenous people were virtually non-existent” (p. 122).

For employees such as Hamish, there can also be significant organisational and management issues that affect their ability to function in what are essentially non-Indigenous agencies that mostly have little experience in the employment and management of Indigenous staff. In personal discussions that the author has had with Indigenous Advisors working in Family Relationship Centres, the view has frequently been expressed that employers have little understanding of what is required of them to be able to effectively develop the trust and confidence of their local Indigenous communities. For example, the position of Indigenous Advisor sometimes defaults to an office-based position in which the Advisor is only available to support and assist non-Indigenous

staff when Indigenous clients come through the front door. In many instances, this provides very limited opportunity for regular or consistent community outreach, and even less opportunity for dispute resolution to take place in a community setting in a manner that is timely and consistent with the needs of Indigenous clients.

The *Solid Work* report noted that organisational practices of dispute management and decision-making are nested within “webs of relationships, structures and systems” (p. 119) and, hence, for dispute resolution practice to be effective, these three elements must work closely together. The report asserts that simply employing Indigenous Advisors to work in established non-Indigenous agencies will not work if the structures and systems in which they are employed work against the development of relationships and do not support the practice of having culturally appropriate dispute resolution.

The current ad hoc, fragmented nature of service delivery in this area is a key factor in the recommendation of the report to provide for national, regional and local coordination of Indigenous dispute management services. The *Solid Work* report concludes that such a structure is “integral to a broader response to ‘closing the gap’ and the building of safer, self-sustaining Indigenous communities” (p. 130). The response of the government to the recommendations contained in this report is keenly awaited by all who have an interest in this area, but most particularly by Indigenous Australians, who for too long have gone without adequate services in this area.

## Reference

Federal Court of Australia Indigenous Dispute Resolution and Conflict Management Case Study Project. (2009). *Solid work you mob are doing: Case studies in Indigenous dispute resolution & conflict management in Australia. Report to the National Alternative Dispute Resolution Advisory Council*. Melbourne: Federal Court of Australia. Retrieved from <[tinyurl.com/26r6r8s](http://tinyurl.com/26r6r8s)>.

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